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**FISCAL IMPACT STATEMENT**

**LS 6274**

**BILL NUMBER: SB 131**

**NOTE PREPARED:** Nov 30, 2012

**BILL AMENDED:**

**SUBJECT:** Attorney's Fees in Civil Actions.

**FIRST AUTHOR:** Sen. Kruse

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. It requires an award of reasonable and necessary attorney's fees to the prevailing party in a civil action when the nonprevailing party: (1) brought the action on a claim or asserted a defense that is frivolous, unreasonable, vexatious, or groundless; (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, vexatious, or groundless; or (3) litigated the action in bad faith.
- B. It exempts governmental entities and employees from liability for an award of attorney's fees.

**Effective Date:** July 1, 2013.

**Explanation of State Expenditures:** This bill may make it easier for the state to recover certain costs of litigation. The Office of the Attorney General represents the state in cases where the state is a defendant in a civil lawsuit. If the state of Indiana is a defendant in a lawsuit and the state prevails, the Office of the Attorney General could produce a detailed summary of the costs for the case in which it prevailed and potentially recover some or all of the costs.

**Background** – This bill affects civil actions in the following areas affecting state and local agencies:

- Investigations by the Office of the Attorney General
- Impeachment, removal, resignation, and disqualification of state and local officers

- Whistleblower claims
- Violations of open door meetings and access of public records
- Regulation of insurance by the Department of Insurance
- Regulation of financial institutions by the Department of Financial Institutions
- Tort claims against governmental entities and public employees
- Civil rights claims against public employees

<b>Code Cites Affected by Bill</b>		
<b>Code Cite</b>	<b>Subject Area</b>	<b>Type of Action</b>
IC 4-6-3-6	Office of the Attorney General	Application to enforce investigative demand; procedure; order
IC 5-8-1-35	State and Local Administration	Officers' impeachment, removal, resignation, and disqualification Verification of accusation; citing party; hearing; judgment
IC 5-11-5.5-6	State and Local Administration	False claims and whistleblower protection Compensation to complainant; exceptions and modifications
IC 5-14-1.5-7	State and Local Administration	Public meetings (Open Door Law) / violations; remedies; limitations; costs and fees / denial of disclosure; action to compel disclosure; intervenors; burden of proof; attorney's fees and costs
IC 5-14-3-9	State and Local Administration	Access to public records / denial of disclosure; action to compel disclosure; intervenors; burden of proof; attorney's fees and costs
IC 24-2-3-5	Trade Regulation	Misleading trade names; trade secrets; attorney's fees; conditions
IC 24-4-7-5	Trade Regulation	Regulated businesses; contracts with wholesale sales representatives; termination of contract; payment of commissions accrued; failure to comply; attorney's fees and costs
IC 26-1-2.1-108	Commercial Law	Leases; unconscionability
IC 27-1-3.1-17	Insurance	Dept. of Insurance; examinations; liability of Commissioner, authorized representative, or examiner; attorney's fees
IC 28-1-5-8.5	Financial Institutions	Dept. of Financial Institutions; banks, trust companies, and building and loan associations, generally; shareholders' derivative proceedings; procedure

IC 31-17-4-3	Family Law / Custody	Parenting time, rights of noncustodial parent; attorney's fees, court costs, and litigation expenses
IC 32-30-6-9.5	Property Law	Causes of action; nuisance actions; frivolous nuisance actions; court costs; attorney fees
IC 34-7-7-8	Civil Law and Procedure	Defense in civil actions against persons who act in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue
IC 34-12-3-4	Civil Law and Procedure	Prohibited causes of action; legal actions involving firearms and ammunition manufacturers, trade associations, and sellers
IC 34-13-3-21	Civil Law and Procedure	Causes of action, claims against government; tort claims against governmental entities and public employees; attorney's fees; allowance to governmental entity; action for abuse of process
IC 34-13-4-4.	Civil Law and Procedure	Causes of action, claims against government; civil rights claims against public employees; attorney's fees; allowance to governmental entity; action for abuse of process

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Effect on Local Governments* – This bill may make it easier for local governments to recover certain costs of litigation. Counties and municipalities either retain attorneys by contract or have attorneys on staff. If a local government prevails in a lawsuit, the local unit of government may be able to recover some or all of the costs of legal representation.

*Effect on Courts* – This bill could increase the number of hearings in civil matters that courts would be required to hold. The number of new hearings would vary by county. Except when the parties to a case settle outside of court, courts would be required to determine, in all civil cases where a party prevailed, whether the nonprevailing party was frivolous, unreasonable, vexatious, or groundless in their litigation or defense. Under current law, courts already do this when the party to a case files a motion. The number of cases where the courts already hold these hearings is not known.

In CY 2009, the most recent year for which this information is available, the trial courts in Indiana disposed 227,187 civil cases and 194,369 small claims cases. The number of cases where the parties in a case settled outside of court is not known.

### **Explanation of Local Revenues:**

**State Agencies Affected:** Office of the Attorney General.

**Local Agencies Affected:** County and municipal governments; Trial courts; City and town courts; Township courts.

**Information Sources:** 2011 Indiana Judicial Report.

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